at a similar conclusion when, as in *State* v. *Constatine*, supra, the question of interpretation seems not to have been seriously considered, and the decision is based upon the ground that intent is not a normal element of the offense.

POPULAR REFERENDUM AS A DELEGATION OF LEGISLATIVE POWER.—The rule forbidding the delegation of legislative power arises from the organization of governmental power under the State constitutions, whereby the people having entrusted their representatives with the prerogative of legislation, the representatives must exercise their discretion finally and definitely, and not shift the responsibility placed upon them. *Barto* v. *Himrod* (1853) 8 N. Y. 483; *Locke's Appeal* (1873) 72 Pa. 491; *State* v. *Parker* (1854) 26 Vt. 357. Though of general application, the rule is not absolute and should be read in the light of the theory that the representatives are presumed to be better fitted to judge of the expediency of laws than are the people themselves. *Thorne* v. *Cramer* (1851) 15 Barb. 112. The spirit of the rule, therefore, does not include legislation which in the extent of its application is extremely limited. In such cases the legislature cannot in fact or theory be said to act more advantageously. *People* v. *Caldwell* (1848) 10 Ill. 1; *Upham* v. *County Sup'rs* (1857) 8 Cal. 378. There is no question that it may delegate certain powers ordinarily incident to municipalities; powers of local government, especially local taxation and police regulations. *State* v. *Noyes* (1855) 30 N. H. 279; *Commonwealth* v. *Bennett* (1871) 108 Mass. 27; Cooley, Const. Lim. 264. In the cases involving these municipal ordinances, the analysis often employed is that the constitutions were made with the idea of local government in mind, and with the specific intention that local legislative power should be delegated. *People* v. *Hurlbut* (1871) 24 Mich. 44. Yet by the weight of authority the legislature may deprive the people of the usual powers of local government not expressly reserved to them by the constitution. *In re Senate Bill* (1888) 12 Colo. 188; *People* v. *Pinckney* (1865) 32 N. Y. 377; *Meriwether* v. *Garrett* (1880) 102 U. S. 472. Moreover, powers not ordinarily incident, at least originally, to municipal corporations, may be delegated to them. *Stein* v. *Mayor* (1854) 24 Ala. 591; *Clarke* v. *Rochester* (1857) 24 Barb. 446; *St. Louis* v. *Alexander* (1856) 23 Mo. 483; *Thompson* v. *Lee County* (1865) 3 Wall. 327. It is evident, therefore, that the extent to which delegation is proper need be tested only with reference to the general purposes of legislative authority. So viewed, the delegation of legislative power in matters of purely local concern, though it must not be unreasonably construed to include the giving of a right to make any local law whatever, *People* v. *Collins* (1854) 3 Mich. 415, is perfectly proper in the ordinary case. It is unnecessary, therefore, in connection with purely local acts, to inquire whether a submission to popular vote is a delegation.

In the case of a general law, however, the question becomes one of importance, since any delegation of power in matters not local is forbidden by the spirit of the constitutions. *People* v. *Reynolds* (1848) 10 Ill. 1. Contingent or conditional legislation is generally valid. The act is a

binding law as soon as passed and the contingency merely goes to its operation. *Cargo* v. *U. S.* (1813) 7 Cranch 382; *Darling* v. *Insurance Co.* (1896) 12 Wis. 63. The operation of such laws is analogous to that of the repealing acts, to become operative at a future time, the condition being merely the lapse of time. Though as a matter of principle it seems immaterial whether the contingency be certain or uncertain, it should be one, the results of which can be foreseen and adjudged by the legislators. *Ex parte Wall* (1874) 48 Cal. 279. Cases of this sort may appear closely analogous to those of referendum. But where, as in the latter class of cases, the outcome depends upon an independent decision of the people, rendered as a result of a consideration of all the conditions, interests and attending results—in other words, the very exercise of discretion vested in the legislature—the result is a delegation of legislative power. To hold that a law with such a referendum is complete, the legislative discretion finally exercised, and the operation merely made contingent upon the happening of an event, namely the approval of the people, is hiding a matter of substance behind a matter of form. However beneficial a general referendum of this sort may be in a particular case, it is inconsistent with the principles of representation, and not in accord with the constitutions. *In re Municipal Suffrage* (1894) 160 Mass. 566; *Santo* v. *Iowa* (1855) 2 Ia. 165.

A recent case, *People* v. *Ontario* (Cal. 1906) 84 Pac. 205, suggests a class intermediate between laws purely local and those of general nature. In that case, a general law providing that the boundaries of existing municipalities could be enlarged and their exact limits fixed by a popular vote of the people affected, in a manner indicated, was upheld. Since fixing boundaries is a matter of purely local concern and impossible of accomplishment under a uniform law, *Smith* v. *McCarthy* (1867) 56 Pa. 359; *People* v. *Carpenter* (1861) 24 N. Y. 86; *Stilz* v. *City* (1877) 55 Ind. 515, the decision is correct. Cf. *Bank of Chenango* v. *Brown* (1863) 26 N. Y. 467. Where a law, though general in form, affects each locality differently, not as an accidental circumstance arising from different conditions, but from the nature of the objects to be attained, the different applications being distinct and unrelated, it is clearly unnecessary to class it among those enactments as to which a popular referendum is improper. The case is analogous to special laws with referenda, joining counties, *People* v. *Salomon* (1869) 51 Ill. 37; *People* v. *McFadden* (1889) 81 Cal. 489, or fixing school district limits. *Call* v. *Chadbourne* (1858) 46 Me. 206.